

95-00193

OFFICE OF THE ATTORNEY GENERAL



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APR 26 1995

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Honorable Bobby Jo Johnson
Chairman
Wilcox County Commission
P.O. Box 4881
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Counties - Attorney Fees -
Tax Sales - Funds

The county commission has no legal authority to pay a tax sale purchaser's personal attorney's fees.

If a tax sale purchaser has performed no service, advanced no money or property for the use of the county, the county commission has no equitable or moral obligation to pay a tax sale purchaser's personal attorney's fees.

Dear Mr. Johnson:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Can the Wilcox County Commission legally pay the attorney fees incurred by Clifford Twilley in connection with a lawsuit over land purchased by Clifford Twilley at a tax sale?

FACTS AND ANALYSIS

The property in question was listed as delinquent for ad valorem tax and was put up for sale by the tax collector of Wilcox County. The property was purchased by Clifford Twilley. MacMillan Bloedel, Inc., filed a lawsuit to quiet title in the property, and it was found that the property was in fact located in Marengo County and that MacMillan Bloedel had a superior title over that of Clifford Twilley.

In the interim between the date Clifford Twilley purchased the property and the lawsuit, Clifford Twilley cut and sold timber from the property and received \$9,030.30. The Court ordered that Clifford Twilley pay MacMillan Bloedel, \$9,030.30. Wilcox County was not a party to the lawsuit nor has Clifford Twilley filed a claim with Wilcox County for attorney's fees spent to defend this lawsuit.

The general rule applicable to all tax sales involving the purchase of real property is the rule of caveat emptor, let the buyer beware, as the buyer purchases at his peril. Flowers v. Tillery, 127 So.2d 595 (1961). Therefore, a tax purchaser is on notice that a claim may be made against him to either quiet title or to redeem the property purchased at the tax sale by the owner of the land or property or the persons entitled to redeem.

Article IV, Section 94, Constitution of Alabama 1901, as amended by Amendment 112 of the Constitution of Alabama 1901, provides as follows:

"The legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever . . ."

Section 11-3-11, Code of Alabama 1975, sets out the powers and duties of a county commission in this state. Paragraph (17) authorizes the county commission "to pay out of any funds in the county treasury all the expenses, including a reasonable attorney's fees incurred by the county treasurer in resisting the payment of any warrant when said resistance on the part of the county treasurer is successful." (Emphasis added.)

The Alabama Supreme Court in State v. Homan, 92 So.2d 51 (1957), held that the only way that the county commission could pay the attorney's fees of someone in a private and individual lawsuit was if the lawsuit was for the purpose of successfully defending a public employee and/or the municipality.

Inherent in your question, however, is the issue of whether the county has an equitable or moral obligation to pay the attorney fees of this particular tax purchaser. Section 11-12-16, Code of Alabama 1975, authorizes the county commission to make discretionary appropriations from the general or special funds of the county treasury for payment of equitable or moral claims made against the county. The provision is intended to reimburse or refund "any person, firm or corporation who in good faith has performed services, advanced money or property for the use of the county." See, Rice v. Tuscaloosa County, 4 So.2d 497 (1941); Deal v. Tuscaloosa County, 45 So.2d 691 (1950); State ex rel. Fowler v. State, 185 So. 404 (1938). In the scenario presented in this fact situation, the tax purchaser has not performed any services or advanced any money or property that has been used by the county; therefore, the authorization under Section 11-12-16 would not apply in this situation.

CONCLUSION

If the tax sale purchaser has performed no service, advanced no money or property for the use of the county, the county commission has no equitable or moral obligation to pay a tax sale purchaser's personal attorney's fees.


Also, since Wilcox County was not named in the lawsuit between Clifford Twilley and MacMillan Bloedel, Inc., and no claim has been made against the county, no expenses have been incurred by the county treasurer. Therefore, the county has no legal authority to pay Mr. Twilley's personal attorney's fees incurred to defend a private lawsuit.

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I hope this sufficiently answers your question. If our office can be of further assistance, please contact Gwendolyn B. Garner, Revenue Department, Legal Division.

Sincerely,

JEFF SESSIONS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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